Supreme Court, U. S.
FILED
SEP 22 1978
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-493

EDWARD S. REDINGTON, as Trustee for the liquidation of the business of Weis Securities, Inc.,

Petitioner,

—against—

TOUCHE ROSS & Co., and SECURITIES INVESTOR PROTECTION CORPORATION,

Respondents.

CROSS-PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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TABLE OF CONTENTS

	PAGE
Table of Authorities	i
Opinions Below	2
Jurisdiction	2
Questions Presented	2
Statutes and Rules Involved	3
Statement Of The Case	3
Court of Bankruptcy Jurisdiction and Touche Ross' Consent	4
The District Court's Treatment of the Jurisdictional Issues	5
The Court of Appeals' Failure to Reach the Jurisdictional Issues	6
Reasons For Granting The Writ	7
I. The Extent Of A Claimant's Consent To The Jurisdiction Of A Court Of Bankruptcy Under Section 23 Of The Bankruptcy Act Is An Important And Recurring Question Of Law That Has Not Been, But Should Be, Decided By This Court	7
II. This Court Should Exercise Its Power Of Supervision To Determine The Extent Of The Jurisdiction Conferred On District Courts Under The 1970 Act, Or Remand To The Court Of Appeals For Consideration Of That Issue	13
Conclusion	15

TABLE OF AUTHORITIES

Cases:

Associate Funding, Inc. v. *Phipps*, 464 F.2d 1136 (9th Cir.), *cert. denied*, 409 U.S. 1064 (1972)	12
Beldock v. *Faberge, Inc.*, 4 Bank. Ct. Dec. 432 (1978)	11

PAGE

Chase National Bank v. *Lyford*, 147 F.2d 273 (2d Cir. 1945) 11

Conway v. *Union Bank of Switzerland*, 204 F.2d 603 (2d Cir. 1953) 10

Dwyer v. *Franklin*, 227 F.2d 152 (7th Cir. 1955), *cert. denied*, 350 U.S. 995 (1956) 12

In re Beasley-Gilbert's, Inc., 285 F. Supp. 359 (S.D. Ohio 1968) 12

In re Farrel Publishing Corp., 130 F. Supp. 449 (S.D.N.Y. 1955) 11

In re Ira Haupt & Co., 289 F. Supp. 966 (S.D.N.Y. 1968) 11

Katchen v. *Landy*, 382 U.S. 323 (1966) 8, 9, 10

Kendall v. *Stokes*, 37 U.S. (12 Pet.) 524 (1838) 13

Liberty Mutual Insurance Co. v. *Mann*, 73 F.R.D. 295 (E.D. Mo. 1976) 12

Liman v. *United Kingdom Mutual Steamship Assurance Association*, 297 F. Supp. 577 (S.D.N.Y.), *appeal dismissed*, 418 F.2d 9 (2d Cir. 1969) 11

Masterson v. *Valley National Bank*, 424 F.2d 296 (3d Cir. 1970) 12

Moore v. *New York Cotton Exchange*, 270 U.S. 593 (1926) 11

Nissho American Corp. v. *Humphreys*, 445 F.2d 1096 (5th Cir.), *cert. denied*, 404 U.S. 991 (1971) 12

Nortex Trading Corp. v. *Newfield*, 311 F.2d 163 (2d Cir. 1962) 11

Peters v. *Lines*, 275 F.2d 919 (9th Cir. 1960) 12

Riehle v. *Margolies*, 279 U.S. 218 (1929) ..... 14n.

Rudick v. *Laird*, 412 F.2d 16 (2d Cir.), *cert. denied*, 396 U.S. 918 (1969) 13

Schwartz v. *Levine & Malin, Inc.*, 111 F.2d 81 (2d Cir. 1940) 10

SEC v. *Albert & Maguire Securities Corp.*, 560 F.2d 569 (3d Cir. 1977) ..... 13n.

PAGE

United Artists Corp. v. *Masterpiece Productions, Inc.*, 221 F.2d 213 (2d Cir. 1955) 11

United Mine Workers v. *Gibbs*, 383 U.S. 715 (1966) 13

United States v. *Heyward-Robinson Co.*, 430 F.2d 1077 (2d Cir. 1970), *cert. denied*, 400 U.S. 1021 (1972) 11

United States v. *Roth*, 164 F.2d 575 (2d Cir. 1948) 10, 11n.

Williams v. *Austrian*, 331 U.S. 642 (1947) 13, 14

Statutes, Rules and Regulations:

Bankruptcy Act (11 U.S.C. §§ 1 *et seq.*)

Section 2b, 11 U.S.C. § 11b 14
Section 2a(7), 11 U.S.C. § 11a(7) 7n., 13, 14
Section 23, 11 U.S.C. § 46 .....14 & n.
Section 23b, 11 U.S.C. § 46b 7, 9
Section 57g, 11 U.S.C. § 93g 9
Section 68a, 11 U.S.C. § 108a .....10 & n.
Section 102, 11 U.S.C. § 502 13
Section 115, 11 U.S.C. § 515 .....13, 14n.

Securities Investor Protection Act of 1970 (15 U.S.C. §§ 78aaa *et seq.*) as in effect prior to the Securities Investor Protection Act Amendments of 1978, Pub. L. No. 95-283, 92 Stat. 249 (1978) 13–15

Section 5, 15 U.S.C. § 78eee 13
Section 5(b)(2), 15 U.S.C. § 78eee(b)(2) 13 & n., 15n.
Section 6, 15 U.S.C. § 78fff 13
Section 6(b)(1), 15 U.S.C. § 78fff(b)(1) .....13 & n.
Section 6(c)(1), 15 U.S.C. § 78fff(c)(1) ..14 & n., 15n.

28 U.S.C. § 1254(1) 2
U.S. Const. Art. III 14

PAGE

Books and Treatises:

3 W. Collier, *Bankruptcy*, ¶ 60.85[2] (14th ed. 1977) 13n.

4 W. Collier, *Bankruptcy*, ¶ 68.04[2.1] (14th ed. 1978) ..... 11n.

4 W. Collier, *Bankruptcy*, ¶ 68.20[4] (14th ed. 1978) 10

3 *Moore's Federal Practice*, ¶ 13.19[1] (1978) 10

Congressional Materials:

Report of the House Comm. on the Judiciary on Bankruptcy Law Revision, H.R. Rep. No. 95-595, 95th Cong. 1st Sess. (1977) 8

Report of the Commission on the Bankruptcy Laws of the United States, H.R. Doc. No. 93-137, Part I (1973) 8

IN THE

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Petitioner,

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TOUCHE ROSS & Co., and SECURITIES INVESTOR PROTECTION CORPORATION,

Respondents.

CROSS-PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioner Edward S. Redington (the "Trustee") hereby requests that a writ of certiorari issue to review the decision of the Court of Appeals for the Second Circuit, entered on April 21, 1978.

The Trustee was appointed by order of the United States District Court for the Southern District of New York to liquidate the business of Weis Securities, Inc., ("Weis") pursuant to the Securities Investor Protection Act of 1970, 15 U.S.C. §§ 78aaa *et seq.* ("SIPA" or the "1970 Act").[1] Prior to its liquidation Weis had been a broker-dealer in securities and a member of the New York Stock Exchange, Inc. ("the Exchange").

1. After this action was commenced, the Securities Investor Protection Act was amended in certain respects in 1978. Pub. L. No. 95-283, 92 Stat. 249 (1978). Where reference is made to the act as it existed before the amendments it will be called the "1970 Act."

A petition for certiorari, dated August 23, 1978, has previously been filed in this case by Touche Ross & Co. ("Touche Ross"), the defendant-appellee below. The Trustee is submitting a brief in opposition to Touche Ross' petition contemporaneously herewith.

Opinions Below

The opinion of the Court of Appeals (1a-35a)[2] is unofficially reported at [Current] Fed. Sec. L. Rep. (CCH) ¶ 96,404. The opinion of the United States District Court for the Southern District of New York (40a-58a) is reported at 428 F. Supp. 483.

Jurisdiction

The judgment of the Court of Appeals was entered on April 21, 1978 (36a-37a). On July 7, 1978, the Court of Appeals denied Touche Ross' timely petition for rehearing (38a-39a). This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

Questions Presented

1. Whether, by filing regular and priority proofs of claim in a bankruptcy or SIPA liquidation proceeding, a claimant subjects himself to the summary jurisdiction of the district court as a Court of Bankruptcy (a) as to any adverse claim by a Trustee that is reasonably related to the creditor's claim or involves overlapping proof, or (b) as to any adverse claim by a Trustee that would be considered "mutual" under Section 68a of the Bankruptcy Act, or (c) only as to adverse claims by a Trustee that arise from the same transaction or occurrence as the creditor's claim?

2. Whether Congress conferred on a district court supervising a SIPA liquidation under the 1970 Act the full

2. Numerals followed by the letter "a" refer to pages of the Appendix attached to Touche Ross' petition.

plenary jurisdiction of a Chapter X or federal equity receivership court, rather than the more limited plenary jurisdiction of a district court supervising a bankruptcy under Chapters I-VII of the Bankruptcy Act?

Statutes And Rules Involved

Sections 2a(7), 23, 102 and 115 of the Bankruptcy Act, 11 U.S.C. §§ 11a(7), 46, 502 and 515, and sections 5(b)(2), 6(b)(1) and 6(c)(1) of the 1970 Act, 15 U.S.C. §§ 78eee(b)(2), fff(b)(1) and fff(c)(1) as in force when this action was commenced are set forth in relevant part in the Appendix hereto.

Statement Of The Case

The facts underlying this action are more fully set forth in the Trustee's brief in opposition to Touche Ross' petition and in the brief in opposition submitted by the Trustee's co-respondent and co-plaintiff below, the Securities Investor Protection Corporation ("SIPC"). Only certain salient facts need be highlighted herein.

In 1972 Touche Ross, a firm of certified public accountants, audited Weis and certified the adequacy of Weis' financial statements "as at May 26, 1972" under Section 17 of the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a *et seq.* (the "Exchange Act"), and the rules and regulations thereunder; the audit failed to detect false and fraudulent entries in Weis' books and records, substantial overstatements of Weis' profitability and net worth and serious misstatements of its net capital ratio. The audit is alleged to have been at least negligent, if not grossly negligent and reckless, and to have been the proximate cause of a SIPA

liquidation in which the Trustee has not been able to make all of Weis' customers and creditors whole.

In the complaint (reproduced in the Appendix to SIPC's brief in opposition to Touche Ross' petition), the Trustee asserted six separate claims for relief against Touche Ross.[3] One of these claims was predicated on Section 17 of the Exchange Act and is the subject of Touche Ross' petition.

The Trustee's other five claims for relief involve causes of action under state and common law principles of negligence, breach of contract and breach of warranty. The Trustee asserted these claims in his derivative capacity as representative of Weis and as bailee of the property entrusted to Weis by its customers. Jurisdiction over these non-federal claims was based on principles of pendent jurisdiction and on the jurisdiction of the District Court as a Court of Bankruptcy under the 1970 Act and the provisions of the Bankruptcy Act incorporated into that Act.

Court of Bankruptcy Jurisdiction and Touche Ross' Consent

The Trustee had two grounds for invoking the jurisdiction of the District Court as a Court of Bankruptcy. First, the 1970 Act specifically gave the District Court the "powers" of a Chapter X court and a federal equity receivership court as well as a court supervising an ordinary bankruptcy. A Chapter X or federal equity receivership court would of course have *plenary* jurisdiction over any action commenced by the Trustee in his home court.

Second, Touche Ross had consented to the *summary* jurisdiction of the District Court as a Court of Bankruptcy by submitting two proofs of claim in the Weis liquidation. One

3. Eight claims are also asserted by SIPC. SIPC, however, asserted different jurisdictional bases for its non-federal claims.

claim sought $67,972 for commencing work on Weis' 1973 audit as well as a smaller amount ($7,471) for services performed by Touche Ross at Weis' London and Paris offices. The other claim sought $11,664 for services allegedly rendered in connection with the investigation of Weis' books and records conducted in late April and May of 1973 by the Securities and Exchange Commission and the New York Stock Exchange. The bulk of this claim is attributable to meetings with the SEC and the Exchange and "[s]ubstantiation and documentation of alleged fraudulent bookkeeping practices and entries." These are the very practices and entries which prevented Weis from being saved as a going concern and for which the complaint alleges that Touche Ross was responsible.

The District Court's Treatment of the Jurisdictional Issues

The District Court dismissed the complaint in its entirety. Stating that "[t]he arguments for the Trustee have been considered but cannot be accepted" (56a), the Court held that it had only the plenary jurisdiction of a court supervising a bankruptcy rather than the broader jurisdiction of a Chapter X or federal equity receivership court (56a). The Court also held that Touche Ross did not consent to the summary jurisdiction of the Court for the Trustee's claims because the claims of Touche Ross and the Trustee were not "mutual" within the meaning of Section 68 of the Bankruptcy Act. (*Id.*)

The Court's discussion of Touche Ross' claims was extremely perfunctory. The Court ignored the claim that sought recovery for substantiation of the fraud and bookkeeping irregularities underlying the 1972 audit. Instead, the Court emphasized only the small portion of one of the

claims which involved the services rendered by Touche Ross at Weis' London and Paris branch offices. The Court's analysis of the issue is contained in the following two sentences:

> "[T]he claim filed by Touche in the Weis liquidation was for accounting work in *European offices of Weis* in late 1972 and early 1973, as well as for a Stock Exchange audit as of April 27, 1973. The claim by the Trustee against Touche does not arise out of any work done for Weis by Touche and for which Touche filed a claim in the Weis liquidation. The claims are not 'mutual' therefore but are unrelated and the consent of Touche cannot be found. • • •" (Citation omitted; emphasis in original.) (56a.)

The Court of Appeals' Failure to Reach the Jurisdictional Issues

The question of the District Court's plenary and summary jurisdiction as a Court of Bankruptcy was briefed extensively by both the Trustee and Touche Ross in the Court of Appeals.[4] However, the Court of Appeals, in sustaining federal jurisdiction over the Trustee's Section 17 claim, stated that "[b]ecause of the view we take of the case, we need express no opinion as to the scope of bankruptcy jurisdiction in SIPA-receivership cases . . . " (3a n. 3.) The court also did not decide the question of pendent jurisdiction but remanded the case to the District Court for further proceedings including a determination of that issue. (15a.)

The Court of Appeals' refusal to decide the extent of the District Court's jurisdiction as a Court of Bankruptcy has

4. The Trustee devoted approximately fifteen pages of his main brief and ten pages of his reply brief to these issues; Touche Ross, approximately thirty-two pages of its brief in opposition.

left this action in a peculiar posture. As matters now stand, if the District Court on remand were to refuse to exercise pendent jurisdiction (or if this Court were to accept certiorari and reverse on the Section 17 question) the Trustee could find that he is out of federal court on his non-Section 17 claims for relief, without ever having had a resolution of the question of jurisdiction over these claims. Even aside from the national importance of the jurisdictional question (which is discussed more fully below at pp. 7-12), this Court should grant certiorari at least for the purpose of remanding for orderly consideration of the jurisdictional issues by the Court of Appeals.

Reasons for Granting the Writ

I.

The Extent Of A Claimant's Consent To The Jurisdiction Of A Court Of Bankruptcy Under Section 23 Of The Bankruptcy Act Is An Important And Recurring Question Of Law That Has Not Been, But Should Be, Decided By This Court.

Section 23b of the Bankruptcy Act (11 U.S.C. § 46b) expressly provides for the granting of summary jurisdiction by consent as follows:

> "Suits by the receiver and the trustee shall be brought or prosecuted only in the courts where the bankrupt might have brought or prosecuted them if proceedings under this Act had not been instituted, *unless by consent of the defendant* • • •" (Emphasis added.)[5]

5. Section 23b is a limitation on the broad jurisdiction conferred on district courts as courts of bankruptcy by Congress in Section 2a(7) of the Bankruptcy Act. There is no dispute that a district court supervising a SIPA liquidation has at least the jurisdiction conferred by Section 23b. As explained in Point II below, Touche Ross does dispute whether the 1970 Act contained a broader grant of jurisdiction to the district court.

A claimant who files a proof of claim in a bankruptcy or SIPA liquidation consents to the jurisdiction of a Court of Bankruptcy with respect to issues involved in determining that claim and certain counterclaims. *See Katchen* v. *Landy,* 382 U.S. 323, 326 n.1 (1966). Section 23b does not, however, provide any guidance on the issue of what adverse claims a claimant consents to have adjudicated by a Court of Bankruptcy by filing a proof of claim. This Court has never ruled on the issue apart from the context of an adverse claim by a trustee to recover a preferential transfer.

Resolution of the question of what other adverse claims a creditor consents to have adjudicated by a Court of Bankruptcy when he files a proof of claim is important to the administration of both the Bankruptcy Act and SIPA and would have a significant impact on the conduct of bankruptcy proceedings throughout the federal courts. As the House Judiciary Committee has noted in reporting on the need for revision of the bankruptcy laws:

> "Under the current bankruptcy law, the jurisdiction of the bankruptcy [court] is limited by the concept of possession, either actual or constructive, or consent, either express or implied. An enormous case law has developed around this provision. Volumes have been written on what constitutes adequate possession to give the bankruptcy court jurisdiction, and on what constitutes adequate consent. * * * In an area of law in which time is of the essence, the delay attendant upon litigation over jurisdiction is needless and expensive." (Footnotes omitted.)

Report of the House Comm. on the Judiciary on Bankruptcy Law Revision, H.R. Rep. No. 95-595, 95th Cong. 1st Sess. 43 (1977). *See also* Report of the Commission on the Bankruptcy Laws of the United States, H.R. Doc. No. 93-137, Part 1, 89-90 (1973).

Although issues concerning the scope of the jurisdiction conferred on the bankruptcy courts by "consent of the defendant" under Section 23b arise frequently in bankruptcy and liquidation proceedings, no uniform standard is followed by the lower federal courts for determining this issue; instead, a number of different approaches are used which make it difficult, if not impossible, for litigants to predict the extent to which a Court of Bankruptcy may choose to exercise its summary jurisdiction. A decision by this court resolving this confusion would not only permit courts of bankruptcy to decide uniformly issues pertaining to their own summary jurisdiction but, perhaps even more importantly, it would clarify for claimants and litigants in bankruptcy proceedings throughout the country their rights and liabilities in subjecting themselves to the jurisdiction of a Court of Bankruptcy.

More than a decade ago in *Katchen* v. *Landy,* 382 U.S. 323 (1966), this court accepted certiorari to decide a related question because of its importance to the administration of the Bankruptcy Act. Id. at 326. The Court there held that where a creditor submits a claim in bankruptcy summary jurisdiction exists in the Court of Bankruptcy to order the return of a voidable preference because the determination of whether a claimant has received a voidable preference is a prerequisite to determining the size and allowability of his claim under Section 57g of the Bankruptcy Act (11 U.S.C. § 93g). The Court reasoned that, the determination that there had been a preference would be *res judicata* in any later plenary suit brought by the Trustee to recover the preference, and therefore concluded that "it can hardly be doubted that there is also summary jurisdiction to order the return of the preference." 382 U.S. at 334. *Katchen* did not decide whether the same rule applied to other types of claims by a Trustee because the petition for certiorari in that case had been limited to the preferential transfer question. *Id.* at 326.

The rationale applied by this Court in *Katchen* logically applies to any "mutual debts" since, under Section 68a of the Bankruptcy Act (11 U.S.C. § 108a) such mutual debts must be set off and "the balance only . . . allowed or paid."[6] As with preferences, such claims seemingly must be determined in order to determine the size and allowability of the creditor's claim. Thus, once a claimant files its proof of claim, summary jurisdiction should exist to adjudicate the merits of any mutual claim, even a wholly unrelated claim, as a set-off which would diminish or defeat the creditor's claims. See *Conway* v. *Union Bank of Switzerland,* 204 F.2d 603, 607 (2d Cir. 1953); *United States* v. *Roth,* 164 F.2d 575, 578 (2d Cir. 1948); 4 W. Collier, *Bankruptcy* § 68.20[4] at 946 (14th ed. 1978). See 3 *Moore's Federal Practice* ¶ 13.19[1] at 482-83 (1978). And, as in *Katchen,* once the merits of the adverse claim have been adjudicated between the parties in a Court of Bankruptcy, that adjudication should be *res judicata* in any later action brought to recover the balance by which a Trustee's counterclaim exceeds the creditor's original claim. *Conway* v. *Union Bank of Switzerland, supra,* 204 F.2d at 607; *Schwartz* v. *Levine & Malin, Inc.,* 111 F.2d 81 (2d Cir. 1940). Accordingly, the principle of *Katchen* v. *Landy* should logically extend not only to preferences but to any mutual claim capable of being set-off under Section 68.

However, the lower federal courts have not applied the same rational as *Katchen.* Instead, they have applied a

6. Section 68 provides in pertinent part as follows:

"Section 68. Set-Offs and Counterclaims.

a. In all cases of mutual debts or mutual credits between the estate of a bankrupt and a creditor the account shall be stated and one debt shall be set off against the other, and the balance only shall be allowed or paid."

The District Court apparently believed that mutuality under Section 68 should be the controlling standard but erred in its consideration of that standard. (56a.) Claims are "mutual" within the meaning of Section 68 if they are "in the same right and between the same parties, standing in the same capacity." 4 W. Collier, *Bankruptcy* ¶ 68.04 [2-1] at 867 (14th ed. 1978); *United States* v. *Roth,* 164 F.2d 575, 578 (2d Cir. 1948).

number of different standards which makes it difficult, if not impossible, to predict the extent to which a particular Court of Bankruptcy may choose to exercise its summary jurisdiction.

In the Second Circuit, for example, a party is deemed to consent to the court's jurisdiction and voluntarily submits to the federal court not only in regard to securing his own relief, but to any claim which the Trustee might reasonably raise against him in the same proceeding pursuant to his duty to collect the estate. *Nortex Trading Corp.* v. *Newfield,* 311 F.2d 163, 164 (2d Cir. 1962); *Chase National Bank* v. *Lyford,* 147 F.2d 273, 277 (2d Cir. 1945); *Liman* v. *United Kingdom Mutual Steamship Assurance Association,* 297 F. Supp. 577, 579-81 (S.D.N.Y.), *appeal dismissed,* 418 F.2d 9 (2d Cir. 1969); *In re Ira Haupt & Co.,* 289 F. Supp. 966, 970-71 (S.D.N.Y. 1968); *see Beldock* v. *Faberge Inc.,* 4 Bankr. Ct. Dec. 432 (1978) (decision of Bankruptcy Judge Galgay). All that appears to be required is a logical relationship between the respective claims, or overlapping proof. *E.g., In re Farrel Publishing Corp.,* 130 F. Supp. 449, 452 (S.D.N.Y. 1955) ("In effect the [Bankruptcy] Act declares a statutory policy to settle all related claims."); *Liman* v. *United Kingdom Mutual Steamship Assurance Association, supra; In re Ira Haupt & Co., supra. See generally, Moore* v. *New York Cotton Exchange,* 270 U.S. 593, 609-10 (1926); *United States* v. *Heyward-Robinson Co.,* 430 F.2d 1077 (2d Cir. 1970), *cert. denied,* 400 U.S. 1021 (1972); *United Artists Corp.* v. *Masterpiece Productions, Inc.,* 221 F.2d 213, 216 (2d Cir. 1955).

Other courts, though also recognizing the principle of consent to the jurisdiction of a Court of Bankruptcy, appear to apply a somewhat stricter standard. These cases suggest that the consent to jurisdiction to be implied from the invocation of the jurisdiction of a Court of Bankruptcy is limited to "closely related" claims or claims in the nature of "compulsory counterclaims". *Peters* v. *Lines,* 275 F.2d 919, 925 (9th Cir. 1960); *Nissho American Corp.* v. *Humphreys,* 445 F.2d 1096, 1098-99 (5th Cir. 1971), *cert. denied,* 404 U.S. 991 (1971); *Masterson* v. *Valley National Bank,* 424 F.2d 296, 298-99 (3d Cir. 1970); *Associate Funding, Inc.* v. *Phipps,* 464 F.2d 1136, 1138-39 (9th Cir.), *cert. denied,* 409 U.S. 1064 (1972); *Dwyer* v. *Franklin,* 227 F.2d 152, 156 (7th Cir. 1955), *cert. denied,* 350 U.S. 995 (1956); *Liberty Mutual Insurance Co.* v. *Mann,* 73 F.R.D. 295, 296 (E.D. Mo. 1976); *In re Beasley-Gilbert's, Inc.,* 285 F. Supp. 359, 361 (S.D. Ohio 1968).

Here, the Trustee's claims arose out of Touche Ross' ongoing role as Weis' accountants preceding the commencement of the Weis liquidation; the evidence relevant to Touche Ross' claims will overlap the evidence necessary to support the Trustee's claims; and some of Touche Ross' claims involve work done with respect to the very false entries which the Trustee alleges Touche Ross failed to detect in its 1972 audit. Accordingly, both mere mutuality and logical relationship exist between the Trustee's and Touche Ross' claims, although they may not be closely related enough to satisfy a strict compulsory counterclaim standard. At a time when the need to clarify the jurisdiction of Courts of Bankruptcy is widely recognized, this case presents a uniquely appropriate factual opportunity for this Court to resolve the question of what standard should be applied under Section 23b.

II.

This Court Should Exercise Its Powers Of Supervision To Determine The Extent Of The Jurisdiction Conferred On District Courts Under The 1970 Act, Or Remand To The Court Of Appeals For Consideration Of That Issue.

Under the 1970 Act, jurisdiction of SIPA courts is determined by reference to Sections 5 and 6 of that Act (15 U.S.C. §§ 78eee and 78fff) and Sections 2a(7), 102 and 115 of the Bankruptcy Act (11 U.S.C. §§ 11(a)(7), 502 and 515), as made applicable by the 1970 Act. These provisions confer on the district courts supervising SIPA liquidations the "powers" of a court supervising a Chapter X proceeding (the 1970 Act §§ 5(b)(2), 6(b)(1)) as well as the power of a district court supervising an equity receivership under Section 115 of the Bankruptcy Act.

In Section 5(b)(2) of the 1970 Act Congress expressly provided that a court in which a SIPA proceeding is initiated shall have the *"powers . . .* of a court of bankruptcy *and* of a court in a proceeding under Chapter X of the Bankruptcy Act." (Emphasis added.)[7] Under the decisions of this Court, this grant of "power" to a federal court is a jurisdictional grant. *United Mine Workers* v. *Gibbs,* 383 U.S. 715, 725 (1966); *Kendall* v. *Stokes,* 37 U.S. (12 Pet) 524, 622-23 (1838); *Rudick* v. *Laird,* 412 F.2d 16, 20 (2d Cir.), *cert. denied,* 396 U.S. 918 (1969). In *Williams* v. *Austrian,* 331 U.S. 642, 659-60 n.45 (1947), this Court noted that the "powers" provision in Section 115 of the Bankruptcy Act "has been interpreted as jurisdictional" by the

7. In Section 6(b)(1) of the 1970 Act Congress augmented and reinforced the grant of "power" to the District Courts contained in Section 5(b)(2) by providing a SIPA Trustee with all the powers of both a bankruptcy and a Chapter X Trustee. *See SEC* v. *Albert & Maguire Securities Co.,* 560 F.2d 569, 574 (3d Cir. 1977); 3 W. Collier, Bankruptcy ¶ 60.85[2] at 1247 (14 ed. 1977).

federal courts. Article III of the Constitution itself uses the word "power" in this jurisdictional sense.

By providing the SIPA court with the "power" of a Chapter X court, Congress conferred on SIPA courts the full range of "power" conferred on district courts under the bankruptcy clause in Section 2b of the Bankruptcy Act (11 U.S.C. § 11b). This grant includes the plenary jurisdictional "power" conferred by Section 2a(7) and exercised in actions brought by Chapter X trustees.[8] *See Williams* v. *Austrian*, 331 U.S. 642, 646 (1947). This grant of jurisdiction to SIPA courts is more than ample to support non-federal claims such as the Trustee's in this case.

The District Court, however, rejected the application of these provisions to the issue of jurisdiction and instead focused improperly on Section 6(c)(1) of the 1970 Act. Relying on that section—which deals with the conduct of liquidation proceedings, not the jurisdiction of the district court—the Court erroneously concluded that its jurisdiction was limited by Section 23 of the Bankruptcy Act to that of a court supervising bankruptcy proceedings under Chapters I-VII of the Bankruptcy Act. (55a-56a.)[9]

8. The grant also includes the jurisdictional Section 115 (11 U.S.C. § 515) which gives the federal court of the trustee's appointment all the ancillary jurisdiction of the "home court" in federal equity receiverships. That jurisdiction entitles the Court which appointed such a receiver to adjudicate any action instituted by its receiver (here the Trustee) regardless of the existence of independent jurisdictional grounds. *See Riehle* v. *Margolies*, 279 U.S. 218, 223 (1929).

9. Section 23 is not referred to anywhere in the 1970 Act, but Section 6(c)(1) does refer to sections referred to in Section 102 of the Bankruptcy Act. Section 23 is one such section. Except in cases of consent, and in actions involving preferential or fraudulent transfers, Section 23 limits the district court's jurisdiction over an action between a trustee and an adverse party to that which would have existed in an action between the bankrupt and the adverse party before the bankruptcy. Section 6(c)(1) states, however, that such provisions of the Bankruptcy Act as it may incorporate apply to the conduct of liquidation proceedings only to the extent that they are consistent with the other provisions of the 1970 Act. Were Section 6(c)(1) interpreted as jurisdictional and its indirect reference to Section 23 interpreted to determine the jurisdiction of SIPA courts, the section would be rendered inconsistent with Section 5(b)(2).

Although the recent amendments to SIPA have altered some of the language of the 1970 Act, the extent of a SIPA court's jurisdiction remains an important, unresolved issue. Moreover, as explained at pages 6-7 *supra*, review or remand on the plenary jurisdictional question as well as the consent question is necessary to cure the Second Circuit's error in failing to reach the jurisdictional issues.

Conclusion

For the foregoing reasons, the Trustee's cross-petition for a writ of certiorari should in all respects be granted.

Dated: September 22, 1978

Respectfully submitted,

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APPENDIX

Securities Investor Protection Act of 1970, as in effect prior to the Securities Investor Protection Act Amendments of 1978, Pub. L. No. 95-283, 92 Stat. 249 (1978).

Sec. 5(b)(2) (15 U.S.C. § 78eee(b)(2)).

> "(2) EXCLUSIVE JURISDICTION OVER DEBTOR.—Upon the filing of an application pursuant to subsection (a)(2), the court to which application is made shall have exclusive jurisdiction of the debtor involved and its property wherever located with the powers, to the extent consistent with the purposes of this Act, of a court of bankruptcy and of a court in a proceeding under chapter X of the Bankruptcy Act."

Sec. 6(b)(1) (15 U.S.C. § 78fff(b)(1)).

> (1) TRUSTEE POWERS.—A trustee appointed under section 5(b)(3) (hereinafter referred to as "trustee") shall be vested with the same powers and title with respect to the debtor and the property of the debtor, and the same rights to avoid preferences, as a trustee in bankruptcy and a trustee under chapter X of the Bankruptcy Act have with respect to a bankrupt and a chapter X debtor."

Sec. 6(c)(1) (15 U.S.C. § 78fff(c)(1)).

> "(1) GENERAL PROVISIONS APPLICABLE.—Except as inconsistent with the provisions of this Act and except that in no event shall a plan of reorganization be formulated, a liquidation proceeding shall be conducted in accordance with, and as though it were being conducted under, the provision of chapter X and such of the provisions (other than section 60e) of chapters I to VII, inclusive, of the Bankruptcy Act as section 102 of chapter X would make applicable if an order of the court had been entered directing that bankruptcy be proceeded with pursuant to the provisions of such chapters I to VII, inclusive * * *."

Bankruptcy Act

Sec. 2a(7) (11 U.S.C. § 11(a)(7)).

"a. The courts of the United States hereinbefore defined as courts of bankruptcy are hereby created courts of bankruptcy and are hereby invested, within their respective territorial limits as now established or as they may be hereafter changed, with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in proceedings under this Act, in vacation, in chambers, and during their respective terms, as they are now or may be hereafter held, to—

* * * (7) Cause the estates of bankrupts to be collected, reduced to money, and distributed, and determine controversies in relation thereto, except as herein otherwise provided * * *."

Sec. 23 (11 U.S.C. § 46).

"a. The United States district courts shall have jurisdiction of all controversies at law and in equity, as distinguished from proceedings under this Act, between receivers and trustees as such and adverse claimants, concerning the property acquired or claimed by the receivers or trustees, in the same manner and to the same extent as though such proceedings had not been instituted and such controversies had been between the bankrupts and such adverse claimants.

b. Suits by the receiver and the trustee shall be brought or prosecuted only in the courts where the bankrupt might have brought or prosecuted them if proceedings under this Act had not been instituted, unless by consent of the defendant, except as provided in sections 60, 67, and 70 of this Act."

Sec. 68a (11 U.S.C. § 108a).

§ *68. Sets-Offs and Counterclaims.* **a. In all cases** of mutual debts or mutual credits between the estate of a bankrupt and a creditor the account shall be stated and one debt shall be set off against the other, and the balance only shall be allowed or paid.

Sec. 102 (11 U.S.C. § 502).

"The provisions of chapters I to VII, inclusive, of this Act shall, insofar as they are not inconsistent or in conflict with the provisions of this chapter, apply in proceedings under this chapter: *Provided, however,* That section 23, subdivisions h and n of section 57, section 64, and subdivision f of section 70, shall not apply in such proceedings unless an order shall be entered directing that bankruptcy be proceeded with pursuant to the provisions of chapters I to VII, inclusive."

Sec. 115 (11 U.S.C. § 515).

"Upon the approval of a petition, the court shall have and may, in addition to the jurisdiction, powers, and duties hereinabove and elsewhere in this chapter conferred and imposed upon it, exercise all the powers, not inconsistent with the provisions of this chapter, which a court of the United States would have if it had appointed a receiver in equity of the property of the debtor on the ground of insolvency or inability to meet its debts as they mature."